**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**
**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Appeal No. 612 of 2007**

**Between:**

Bandaru Nageshwara Rao

... Appellant

**And**

The Special Deputy Collector (Tribal Welfare),
Bhadrachalam, Khammam District & others

... Respondents

**::JUDGMENT::**

Counsel for the appellant: Shri Mummaneni Srinivasa Rao

**August 09, 2007**

**Per G.S. Singhvi, CJ**

Having failed to persuade the learned Single Judge to review order dated 6.6.2006 passed in Writ Petition No.11865 of 2005, the appellant has preferred appeal under Clause 15 of the Letters Patent and prayed for quashing order dated 21.12.2006 passed in Review WPMP No.27217 of 2006.

Shri Mummaneni Srinivasa Rao, learned counsel for the appellant relied on judgment dated 7.9.2006 passed in Writ Appeal

No.877 of 2006 and argued that the order under challenge is liable to be set aside because while declining the appellant's prayer for review, the learned Single Judge did not consider the order of the Division Bench in a correct perspective.

In our opinion, there is no merit in the aforementioned argument of the learned counsel. In Writ Appeal No.877 of 2006, the Division Bench was called upon to examine the correctness of order dated 6.6.2006 passed in Writ Petition No.11865 of 2005 whereby the learned Single Judge quashed order dated 21.4.2005 of Agent to the Government (respondent No.4 herein) under Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short, 'the 1959 Regulation'), as amended by Regulation No.1 of 1970, in C.M.A.No.1 of 2003. At the hearing of the appeal, it was revealed that the point sought to be argued by the learned Senior Counsel appearing for the appellant had not been raised before the learned Single Judge. Therefore, the Division Bench dismissed the appeal, but gave liberty to the appellant to seek review of order dated 6.6.2006 with liberty to him to file appeal against the original order as well as the adverse order, if any passed in the review petition. This is evident from order dated 7.9.2006 passed by the Division Bench, the relevant portions of which are extracted below:

> This appeal is directed against order dated 6.6.2006 passed by the learned Single Judge in Writ Petition No.11865 of 2005.
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> Shri K.G. Kannabhiran, learned Senior Advocate for the appellant relied on the provisions contained in Andhra Pradesh (Telangana Tribal Areas) Regulations, 1359 F (for short, 'the Regulations') and argued that the order under appeal should be set aside because the provisions contained in the Regulations were not considered by the learned Single Judge.
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> In the context of the aforementioned argument, we enquired from Shri Kannabiran whether any argument based on the Regulations was raised before the learned Single Judge. In reply,

the learned counsel fairly stated that no such point had been raised before the Single Bench.

In view of the above, we are not inclined to entertain the appeal at this stage and feel that it will be appropriate for the appellant to first apply for review of the order under challenge by pointing out that the order passed by Special Deputy Collector is sustainable in view of the provisions contained in the Regulations.

Hence, the appeal is dismissed with liberty to the appellant to seek review of the order under challenge.

Needless to say that if the learned Single Judge declines the appellant's prayer for review, then he shall be at liberty to file appeal against the original order as well as the order which may be passed in the review petition."

A reading of the above extracted judgment of the Division Bench makes it clear that the appellant was given liberty to file appeal against the original order i.e. order dated 6.6.2006 passed by the learned Single Judge in Writ Petition No.11865 of 2005 apart from the order to be passed on the review petition. However, for the reasons best known to him, the appellant has not challenged order dated 6.6.2006. Therefore, we do not find any justification to entertain the appeal filed against the order passed in the review petition.

De hors the above conclusion, we are convinced that the learned Single Judge rightly declined to entertain the review petition filed by the appellant. In Writ Petition No.11865 of 2005, respondent Nos.5 and 6 herein had challenged order dated 21.4.2005 passed by respondent No.4 in C.M.A.No.1 of 2003. They filed another writ petition i.e. Writ Petition No.4431 of 2004 for quashing proceedings dated 10.2.2004 in Rc.No.CC/ITD/LTR/Spl.2003 issued by the Additional Agent to Government-cum-Project Officer, ITDA, Bhadrachalam, Khammam District (respondent No.2 herein). The main ground on which respondent Nos.5 and 6 herein challenged the

orders passed by respondent Nos.5 and 2 respectively in Writ Petition No.4431 of 2004 was that orders dated 2.2.1984, 4.12.1987 and 1.7.1992 passed by the competent authorities rejecting the applications filed by the grandfather of respondent No.4 (the appellant herein) had become final and it was not open to Special Deputy Collector (Tribal Welfare), Bhadrachalam (respondent No.1 herein) to suo motu reopen the proceedings by invoking the provisions of the 1959 Regulation and that the direction given by respondent No.2 for registration of case under Section 6-A of the 1959 Regulation was without jurisdiction.

The learned Single Judge noted that the writ petitioners (respondent Nos.5 and 6 herein) purchased Ac.1-31 guntas of land comprised in Survey No.228 of Bandarugudem Village, Manuguru Mandal, Khammam District in 1961, which is a notified scheduled area, from the grandfather of respondent No.4 (appellant herein); that the 1959 Regulation had been enforced in Telangana Area with effect from 1.12.1963; that on a complaint made by Chinnabbai (father of respondent No.4), proceedings were initiated under the 1959 Regulation for eviction of the writ petitioners; that by an order dated 2.2.1984, respondent No.1 dismissed the complaint; that similar complaint made by grandfather of respondent No.4 was dismissed vide order dated 4.12.1987 and another petition filed by the grandfather of respondent No.4 for eviction of the petitioners was dismissed on 1.7.1992; that the three orders were not challenged before any Court; that after about ten years, respondent No.1 suo motu initiated action for ejectment of the writ petitioners on the ground that the land belonging to the Scheduled Tribes could not have been transferred to the non-tribes; that without considering the objections filed by the petitioners, respondent No.1 passed order

dated 11.11.2002 for their eviction from 0.10 guntas of land; that the Agent to the Government-cum-District Collector entertained appeal filed by the writ petitioners against order dated 11.11.2002, but no stay was granted; that Writ Petition No.357 of 2003 filed by petitioner No.1 was disposed of by the Court on 8.1.2003 by granting stay qua order dated 11.11.2002; that in furtherance of order dated 29.1.2004 passed by this Court in Writ Petition No.1568 of 2004, the appeal pending before Additional Agent to the Government was transferred to the Agent, who passed order dated 21.4.2005 and remanded the matter to respondent No.1; that even though orders dated 2.2.1984, 4.12.1984 and 1.7.19992 were not subject matter of C.M.A.No.1 of 2003, respondent No.4 suo motu ordered reopening of all the proceedings and held as under:

> "Having carefully considered the material placed before this Court, particularly the order passed by the Special Deputy Collector in case No.24/83/MGR dated 2.2.1984 holding that the writ petitioners came into possession of the land in question much prior to the enforcement of the Regulation 1 of 1959 which admittedly, has become final, I am of the opinion that the 5th respondent was not justified in remanding the matter for fresh enquiry. Nothing has been placed before this Court to show that any fresh material is made available to disturb the finding recorded by the competent authority after hearing both parties in case No.24/83/MGR dated 2.2.19984. As a matter of fact, the order of ejection dated 11.11.2002 as well as the impugned order passed by the 5th respondent clearly show that the 4th respondent did not produce any documents to show that his ancestors were in possession of the land in question prior to the enforcement of Regulation 1 of 1959 in Telangana area.
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> Having regard to the facts and circumstances of the case, the 5th respondent having rightly set aside the order of ejection, committed an error in directing fresh enquiry. The panchanama said to have been conducted in the year 2003 was only consequent to the order of ejection passed by the Special Deputy Collector dated 11.11.2002. Even assuming that there were any discrepancies with regard to the extent or boundaries of the land,

the same cannot be a ground to remand the matter for fresh enquiry.

In the circumstances, the impugned order to the extent of remanding the matter for fresh enquiry is set aside and W.P.No.11865 of 2005 is allowed upholding the conclusion of the 5th respondent in setting aside the order of ejection dated 11.11.2002.

Since the order of ejection is set aside, the direction in the order impugned in W.P.No.4431 of 2004 to register cases under Section 6-A of the Regulation 1 of 1959 as against the petitioners has been rendered superfluous. Accordingly, the said order is set aside, so far as the writ petitioners are concerned."

In our opinion, the view expressed by the learned Single Judge on the issue of re-opening the eviction proceedings is in consonance with the law laid down in **C. Ramalinga Raju v. District Collector, Eluru, West Godavari District**[1]. In **Special Deputy Collector (Tribal Welfare) v. Datla Venkatapathi Raju**[2], the Division Bench held that the principle of res judicata is not applicable to the proceedings initiated under the 1959 Regulations, but made it clear that such proceedings cannot be initiated unless fresh material comes to the notice of the competent authority to justify such an action.

In Review WPMP No.27217 of 2007, the appellant claimed reconsideration of order dated 6.6.2006 by making the following assertions:

"The order of eviction was passed by the Special Deputy Collector (Tribal Welfare) against 20 persons including the two writ petitioners in respect of Ac.1-31 guntas of land situated in Sy. Nos.225, 228 and 209. Against the said order, the writ petitioners alone filed an appeal (CMA No.1/2003) which was allowed remitting the matter back to the Special Deputy Collector (Tribal Welfare). Pending the said appeal, by virtue of the orders granted in W.P.No.357 of 2003, stay of eviction was granted only to the extent of 20 guntas of land held by the writ petitioners. Thereafter, W.P.No.11865 of 2005 filed by the writ petitioners questioning the

order in the appeal dated 21.4.2005 was allowed setting aside the entire order in the appeal.

Since the order of ejection was passed against 20 persons in respect of Ac.1-31 guntas out of which the two writ petitioners are concerned only with 20 guntas situated in Sy.No.228, this Court while allowing W.P.No.11865 of 2005 ought to have confined the said order only to the writ petitioners.

Except the two writ petitioners since the other 18 persons who suffered the order of eviction did not prefer any appeal, the order of eviction dated 11.11.2002 so far as the said 18 persons are concerned has become final.

It is claimed that except the 20 guntas with which the petitioners are concerned, the rest of the land was restored to the 4th respondent under Panchanama dated 22.1.2003 and he continues in possession as on today.

Hence, the order in W.P.No.11865 of 2005 shall be reviewed confining the said order only to the writ petitioners i.e. only to the extent of 0-20 guntas."

The learned Single Judge noted that the Appellate Authority had set aside the order of eviction against all the 20 persons, who were shown to be in possession of different extents of land totaling Ac.1-31 guntas, and held that there was no warrant for review of the order passed in the writ petition. The reasons assigned by the learned Single Judge for declining to review order dated 6.6.2006 are discernible from the following portion of the order under challenge:

"The grievance of the writ petitioner in W.P.No.11865 of 2005 was that the order of remand was not warranted in the facts and circumstances of the case and therefore the appellate authority was not justified in directing fresh enquiry while setting aside the order of eviction. The said contention of the petitioners was accepted by this Court and the writ petition was allowed holding that the appellate authority having rightly set aside the order of eviction committed an error in directing fresh enquiry. It was also held that there was absolutely no ground to remand the matter for fresh enquiry.

Accordingly, this Court while allowing W.P.No.11865 of 2005 had set aside the order impugned to the extent of remanding the matter for fresh enquiry and made it clear that the rest of the order of the appellate authority in setting aside the order of eviction dated

11.11.2002 is confirmed.

As explained above, since the order of eviction dated 11.11.2002 was set aside in toto by the appellate authority itself and the review petitioner never challenged the said order, it is not open to the review petitioner to contend that except the 20 guntas with which the writ petitioners are concerned, the order of eviction with regard to the remaining land is still subsisting. Consequently, the contention that this Court ought to have confined the order in W.P.No.11865 of 2005 to the writ petitioners alone is misconceived and absolutely without any basis.

It is also relevant to note that the writ petitioners filed W.P.No.4431 of 2004 pleading that they were in possession of the entire extent of Ac.1-31 guntas and that the respondents while initiating proceedings against them in respect of 10 guntas of land each, were trying to interfere with the balance of land which was also in their possession. While directing Rule Nisi in the said writ petition, this Court by order dated 10.3.2004 ordered that the respondents (including the review petitioner who was arrayed as respondent No.4 therein) shall not interfere with the possession of the writ petitioners in respect of the balance extent of the land. The said order continued to be in force till the writ petition was finally allowed along with W.P.No.11865 of 2005. The specific case of the writ petitioners is that they have been continuing in possession of the entire land as on today.

For the aforesaid reasons, I do not find any substance in the contention raised by the review petitioner that this Court committed an error in not confining the order in W.P.No.11865 of 2005 to the writ petitioners."

We are in complete agreement with the learned Single Judge that order dated 6.6.2006 does not suffer from any error apparent warranting its review. If the appellant felt aggrieved by order dated 6.6.2006, he should have challenged the same by filing appeal along with the order passed in the review petition. By omitting to do so, he has disentitled himself from seeking a declaration that order dated 6.6.2006 suffers from a patent legal infirmity requiring interference under Clause 15 of the Letters Patent.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1238 of 2007 filed by the appellant for interim directions is also dismissed.

**G.S. SINGHVI, CJ**

August 09, 2007

**C.V. NAGARJUNA REDDY, J**

svs

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[1] 2000 (4) ALD 443

[2] 2002 (4) ALT 669